

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6389 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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BHARATKUMAR M SHAH

Versus

SECRETARY

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Appearance:

MR DP VORA for Petitioner

MR SK PATEL, AGP for Respondent Nos.1, 2 & 3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 02/09/1999

ORAL JUDGEMENT

1. Heard learned counsel for the parties.

2. The petitioner assistant teacher in the  
respondent No.4 school had sought voluntary retirement  
from his services w.e.f. 30.11.1986, which has been  
granted.

3. The petitioner made grievance that his pay for fixation of pension and other retiral benefits was not correctly fixed. It should have been of Rs.892/- instead of Rs.852. Second grievance is made that the amount of pension, gratuity and other retiral benefits has been paid to the petitioner after considerable delay and he is entitled for interest for this delayed payment.

4. Reply to the Special Civil Application is there on the record on behalf of the respondent No.4, but the respondent nos. 1 and 2 has not cared to file reply to the Special Civil Application. Reply of the respondent No.3 is also there on the record.

5. This Special Civil Application has come up on board on 27.8.1990 for preliminary hearing. Notice was issued to the respondents returnable on 24.9.1990. The matter was placed on board for admission on 5.10.1990 and on that day the matter was admitted and the court passed the order by way of interim relief, which reads under.:

"Respondents are served. No one appears.

Rule. Notice is to interim relief returnable on 12.11.1990. The respondents are directed to place on record a statement of calculation of arrears of pension on different of Rs.892/- and Rs.852/- p.m. and also of interest for the late payment of pension calculated at the rate of 12% p.a. from the due date till the date of payment".

In reply to the Special Civil Application, filed by the respondent No.3, I do not find any explanation what to say a just and cogent explanation for this inordinate delay made in payment of retiral benefits to the petitioner. So far as fixation of pay of the petitioner at Rs.852/- is concerned, it is suffice to say that the respondent No.3 has not furnished any explanation and detail how this amount has been arrived at.

6. Be that as it may, the petitioner is at loss to show that his pay fixed at Rs.852/- by the respondents is contrary to the rules, regulations or any order or circular of the Government. Learned counsel for the petitioner is failed to satisfy the court, how this figure of pay arrived at, is illegal or otherwise contrary to rules, regulations, circular etc. of the State Government. What the learned counsel for the petitioner in fact is attempted to get information from the respondents and if something comes in his favour to

make out the case for petitioner. This cannot be permitted to the petitioner by the court under Article 226 of the Constitution. This court will not make any fishing inquiry in the matter. Learned counsel for the petitioner has utterly failed to satisfy the court that fixation of pay of the petitioner is illegal or otherwise erroneous. This claim of the petitioner is devoid of any substance or merits and accordingly it is rejected.

7. So far as the claim of interest is concerned, I find sufficient merits in this claim of the petitioner. If we go by the reply of the respondent No.3, pension papers of the petitioner were forwarded to his office on 25.3.1987. I appreciate that in this case the respondents have acted promptly. 100% pension as provisional pension and 75% of the amount of DCRG was paid on 24.4.1987. But, this prompt action taken at first stage was not continued and it was not kept in mind that within reasonable time final amount of pension and other retiral benefits are to be given to the petitioner. The delay in payment of the amounts of the pension and other retiral benefits has been explained on the ground that the pension papers are not completed in all respects by the petitioner. This is a vague averment made by the respondents. Learned counsel for the respondents fail to show what were the defects in the application and pension papers of the petitioner. On this averment, which a defence for the sake of defence, no reliance can be placed. Second defence given is that the Gujarat Civil Services (Revision of Pay) Rules, 1987 were brought into force from 1.1.1986 and the pay of the petitioner has to be revised w.e.f. 1.1.1986 and accordingly revision of pension, gratuity etc. has to be made. These rules were came into force vide Government Resolution No.39/ECR/1087/339(2)-(M) dated 1.6.1987 and the same was made effective from 1.1.1986. I find after these rules were brought into force, some reasonable time needs by the respondents to revise the pay, pension and other retiral benefits of the petitioner and to make payment of arrears thereof. These rules were brought into force vide resolution dated 1.6.1987 and two months time is a reasonable time within which the respondents have to undertaken and complete the exercise of revision of pay and retiral benefits of the petitioner. Contrary to it, from the reply of the Special Civil Application, I find that this exercise was completed on 28.7.1988 and thereafter the amount of revised pay and pension, gratuity etc. were paid to the petitioner on 5.1.1989. Final order has been passed on 8.12.1988. So there are delay at three stages, that is, in passing of the order of revision of pay of the petitioner, revision of pension

and other retiral benefits and the payment of arrears of revised pay, revised pension and other retiral benefits. As stated earlier, the respondents have not furnished any just, reasonable and cogent explanation for the inordinate delay made in payment of amount of retiral benefits and arrears of revision of pay. This matter is squarely covered by the decisions of the Apex Court given in many cases. The petitioner is entitled for interest on delayed payment of the amount of arrears of the revised pay, pension, gratuity etc. Calculation has been made of the amount of interest to be paid to the petitioner as per the directions given by this court and as per this calculation the amount of Rs.16732/- has to be paid to the petitioner towards interest at the rate of 12% per annum. Learned counsel for the petitioner orally disputed this calculation and the figure arrived at. What is stated, this figure should have been Rs.17021/-. He has not given out details for his own calculation and figure of the amount of interest arrived at. Otherwise also there is no substantial difference in between the amount of interest as calculated by the respondents and that of the petitioner. Rs.16732/- is to be taken to be the amount of the interest payable to the petitioner.

7. Lastly, learned counsel for the respondents contends that as per the Government Resolution dated 13.5.1986 the petitioner is not entitled for interest at the rate exceeding 10% per annum. I do not find any merits and substance in this contention. This circular relied upon by the respondents is of little help to them, because it is consistent view taken by the courts from time to time that on the delayed payment of pension and other retiral benefits to the employees, interest @ 12% per annum has to be awarded. In this respect reference may have to many decisions of the Apex Court.

8. In the result, this Special Civil Application succeeds in part. Respondents are directed to pay Rs.16732/- to the petitioner within a period of one month from the date of receipt of the writ of this order. In case the respondents fail to pay this amount to the petitioner within one month, then the petitioner shall get interest on this amount at the rate of 15% from the date of this order till the date of the payment thereof. Respondents are directed to pay Rs.2000/- as costs of this petition to the petitioner. Rule is made absolute in the aforesaid terms.

(S.K.Keshote,J.)  
(pathan)

